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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 ROBERTO RUIZ,

13 Plaintiff,

14 v.

15 ATLANTIC MUTUAL INSURANCE
16 COMPANY,

17 Defendants.

18
19 No. C-06-04534 RMW

20 ORDER DENYING PLAINTIFF'S MOTION
21 FOR SUMMARY JUDGMENT

22 [Re Docket Nos. 16, 25]

23
24 Plaintiff Roberto Ruiz moves for summary judgment that defendant Atlantic Mutual
25 Insurance Company ("Atlantic Mutual") is not entitled to reduce its policy limits by the amount of
26 workers' compensation benefits paid to Roberto Ruiz and that Atlantic Mutual is not entitled to a
27 reduction in the full amount of a prior settlement received by Ruiz and his wife because a portion of
28 that settlement was paid as a reimbursement to workers' compensation. For the reasons set forth
below, the court denies plaintiff's motion.

I. BACKGROUND¹**A. The Accident**

On October 7, 1997, Ruiz, then a delivery driver for Fast Undercar, was involved in a motor vehicle accident while driving a company vehicle. His vehicle was hit from behind by a vehicle driven by Cristobal Tavares. Tavares also struck a van which was owned by Group Manufacturing, Inc., and insured by defendant Atlantic Mutual. Ruiz was not injured as a result of the first accident. However, after leaving his car to exchange information with the driver of the van, he was struck from behind by a minivan driven by Alma Ogana. Ruiz sustained serious bodily injury and has not been employed since the accident. Ruiz's wife, Anna Maria, who was working as a nanny, left her job to take care of Ruiz and has likewise not returned to work.

B. Atlantic Mutual Policy

Atlantic Mutual issued business auto insurance policy No. 480 30-30-21 to Group Manufacturing, Inc., from August 1, 1997 to August 1, 1998 ("the Policy"). The Policy includes uninsured/underinsured motorist coverage limits of \$1,000,000.

A. Coverage

We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle." The damages must result from "bodily injury" sustained by the "insured caused by an "accident." The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle."

C. Prior Actions

On July 21, 1998, the Ruizes filed a personal injury action in Santa Clara Superior Court, *Ruiz v. Group Manufacturing, et al.*, Case No. CV775232 ("the Personal Injury Action") that resulted in recovery of \$65,000 in settlement monies from Tavares's and Ogana's insurers. Ruiz also filed a workers' compensation claim, *Ruiz v. Fast Undercar, Inc.*, WCAB No. SJO 0196729, and recovered a total of \$483,594.

Ruiz also filed an action against Atlantic Mutual and American States, the insurers of other vehicles involved in the accident seeking coverage under their policies; both insurers denied his claim. The California Court of Appeal ultimately determined that Ruiz qualified as an insured

¹ The facts of the case are generally undisputed.

1 driver under the Atlantic Mutual policy. *Atlantic Mutual Ins. Co. v. Ruiz*, 123 Cal. App. 4th 1197
2 (2004). In accordance with that determination, Atlantic Mutual paid Ruiz \$451,406, which is equal
3 to the \$1,000,000 policy limit less the settlement payments received by the Ruizes (\$65,000) and the
4 workers' compensation and other payments received by Ruiz (\$483,594).

5 II. ANALYSIS

6 The parties do not dispute that the Policy has policy limits of \$1,000,000. Plaintiff has
7 received \$243,254 in medical payments, \$40,340 in temporary disability, \$200,000 in a final
8 workers' compensation award, and \$65,000.00 in a settlement from the uninsured motorist for a total
9 of \$548,594 in recovery from the accident. Atlantic Mutual paid \$451,406.00, an amount equal its
10 policy limits minus the \$548,594 plaintiff recovered from other sources. Atlantic Mutual asserts that
11 this payment fulfills its obligation to plaintiff as an insured. Plaintiff asserts that Atlantic Mutual is
12 not entitled to offset from its policy limits (1) plaintiff's workers' compensation benefits and (2) the
13 full amount of the settlement from the Personal Injury Action because a portion of the settlement
14 was used to refund workers' compensation.

15 A. Workers' Compensation Offset

16 The parties' first dispute centers around whether the Atlantic Mutual is entitled to offset the
17 amount of workers' compensation received by plaintiff. Specifically, plaintiff seeks a declaration
18 that the Atlantic Mutual policy does not provide for an offset of his workers' compensation
19 recovery.²

20 California Insurance Code section 11580.2(h) provides in relevant part: "Any loss payable
21 under the terms of the uninsured motorist endorsement or coverage to or for any person may be
22 reduced: (1) by the amount paid and the present value of all amounts payable to him . . . under any
23 workers' compensation law, exclusive of nonoccupational disability benefits." As used in the
24 Insurance Code, the word "shall" is mandatory and the word "may" is permissive. Cal. Ins. Code §
25 16. Section 11580.2(h) gives the parties to an insurance policy the right to contract for the reduction
26 of policy benefits by the amount of workers' compensation benefits received by the insured, but it

27 ² The parties do not appear to dispute that Atlantic Mutual is entitled to offset the amounts received
28 by Ruiz for medical payments and temporary disability. The parties also appear to agree that
additional amounts due to plaintiff, if any, will be determined in arbitration.

1 does not confer the right to a deduction absent a specific provision in the policy. *Waggaman v.*
2 *Northwestern Security Ins. Co.*, 16 Cal. App. 3d 571, 579 (1971). Section 11580.2(p)(4) provides an
3 offset for undersinsurance coverage: "When bodily injury is caused by one or more motor vehicles .
4 . . the maximum liability of the insurer . . . shall not exceed the insured's underinsured motorist
5 coverage limits, less the amount paid to the insured by or for any person or organization that may be
6 held legally liable for the injury."

7 Plaintiff contends that there is no language in the Policy that provides for an offset for the
8 amount of his workers' compensation recovery. Failure to provide for a reduction in the policy
9 generally precludes an insurer for claiming such a reduction. *See, e.g., Cannizzo v. Guarantee Ins.*
10 *Co.*, 245 Cal. App. 2d 70, 73-74 (1966) ("We conclude that in the absence of a specific provision in
11 the policy in the instant case, appellant is not entitled to a setoff for the medical benefits paid to
12 respondent."). The Policy here provides the following limits of insurance:

D. Limit of Insurance

1. Regardless of the number of covered "autos", "insured", premiums paid claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the Limit of Insurance for Uninsured Motorists Coverage shown in the Declarations.
2. For a vehicle described in Paragraph b. of the definition of "uninsured motor vehicle," our Limit of Insurance shall be reduced by all sums paid because of "bodily injury" by or for anyone who is legally responsible, including all sums paid or payable under this policy's Liability Coverage.
3. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage and any Liability Coverage form or Medical Payments Coverage endorsement attached to this Coverage Part.

We will not make a duplicate payment under this Coverage for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

We will not pay for any element of "loss" if a person is entitled to receive payment for the same element of "loss" under any workers' compensation, disability benefits or similar law.

27 Policy at ATL 159-60. Plaintiff contends that because section D.2 above does not specify that the
28 Limit of Insurance is to be reduced by any workers' compensation recovery, the Policy does not

1 permit Atlantic Mutual to offset the amount of workers' compensation plaintiff received following
2 the accident from the \$1,000,000 policy limit. Atlantic Mutual contends, however, that the language
3 in D.2, "all sums paid because of 'bodily injury' by or for anyone who is legally responsible,"
4 includes workers' compensation. Plaintiff asserts, however, that this provision cannot be read to
5 permit a setoff of workers' compensation payments because workers' compensation is not a sum paid
6 or payment made "by or for anyone who is legally responsible."

7 First, plaintiff argues that the difference in the language of the second and third sentences of
8 D.3 demonstrates that "anyone who is legally responsible" cannot refer to workers' compensation.
9 The second sentence of D.3 provides:

10 We will not make a duplicate payment under this Coverage for any
11 element of "loss" for which payment has been made by or for anyone
12 who is legally responsible.

13 while the third sentence of D.3 provides:

14 We will not pay for any element of "loss" if a person is entitled to
15 receive payment for the same element of "loss" under any workers'
16 compensation, disability benefits or similar law.

17 Plaintiff points out that the section D.3 refers separately to payment made "by or for anyone who is
18 legally responsible" and payment for elements of loss "under any workers' compensation law." This,
19 according to plaintiff, means that "anyone who is legally responsible" necessarily excludes "workers'
20 compensation law." Mot. at 12 ("If the phrase 'anyone who is legally responsible' was intended to
21 apply to worker's [sic] compensation carriers, the following paragraph of D3 would not have been
22 necessary."). The court disagrees. The second sentence of D.3 provides for the exclusion of
23 duplicate *payments*, while the third sentence of D.3 provides that the insurer will not pay for
24 *elements of loss* to which an insured is entitled under workers' compensation, disability benefits or
25 other similar law. This does not necessarily distinguish workers' compensation or disability benefits
26 from payments "made by or for anyone who is legally responsible." Rather, these sentences
distinguish between payments that will not be duplicated and elements of loss that will not be paid
under the Policy.

27 Second, plaintiff argues that California courts have determined that the language in D.2 and
28 the second sentence of D.3, "anyone who is legally responsible," does not refer to workers'

1 compensation. In support of its argument, plaintiff cites *Rangel v. Interinsurance Exch. of the Auto.*
 2 *Club of So. Cal.*, 4 Cal. 4th 1, 10 n.8 (1992). Atlantic Mutual counters by citing *Rudd v. Cal. Cas.*
 3 *Gen. Ins. Co.*, 219 Cal. App. 3d 948, 954 n.7 (1990).

4 In *Rangel*, the California Supreme Court, deciding whether Cal. Ins. Code § 11580.2(g)
 5 operated to all an insurer to bring a subrogation action based on the rights of the insured against a
 6 workers' compensation carrier, stated in a footnote that it disagreed with the insured's argument that
 7 the language "any person legally liable for the injury or death" refers to a class broader than
 8 tortfeasors. *Rangel*, 4 Cal. 4th at 10 n.8 ("However, we do not agree that 'any person legally liable
 9 for the injury or death' refers to a class broader than tortfeasors.").

10 Atlantic Mutual cites *Rudd* in support of its argument that the workers' compensation
 11 constitutes a payment "made by or for anyone who is legally responsible. In a footnote, the
 12 California Court of Appeal states

13
 14 The payments by an employer, in discharge of his legal liability to pay
 15 workers' compensation benefits for injuries incurred in the course of
 16 the employees work . . . would appear to qualify as a payment by "any
 17 person . . . legally liable" in reduction of the insurer's liability under
 18 underinsured coverage.

19 *Rudd*, 219 Cal. App. 3d at 954 n.7. The footnote in *Rangel* does not overrule *Rudd*. In fact, the
 20 footnote in *Rangel* acknowledges and cites to the footnote in *Rudd*, stating that the language set forth
 21 in §11580.2(g) discussed in *Rangel* is broader than that in § 11580.2(p)(4) discussed in *Rudd*.
 22

23 The language of § 11580.2(g) discussed in *Rangel* reads: "The insurer paying a claim under
 24 an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the
 25 insured to whom the claim was paid against any person legally liable for the injury or death to the
 26 extent that payment was made." *Rangel*, 4 Cal. 4th at 10 n.8; Cal. Ins. Code § 11580.2(g) (emphasis
 27 added). The language from § 11580.2(p)(4) discussed in *Rudd* reads: "When bodily injury is caused
 28 by one or more motor vehicles . . . the maximum liability of the insurer providing the underinsured
 motorist coverage shall not exceed the insured's underinsured motorist coverage limits, less the
 amount paid to the insured *by or for any person or organization that may be held legally liable for
 the injury.*" Cal. Ins. Code § 11580.2(p)(4) (emphasis added).

1 Because of the difference in language and context, *Rangel* does not inform the present
2 inquiry. The language of the Policy at issue ("by or for anyone who is legally responsible") is much
3 broader than the language discussed in *Rangel* ("paid against any person legally liable for the injury
4 or death to the extent the payment was made"). Further, the language in *Rangel* was interpreted in
5 the context of subrogation. In fact, the language of the instant Policy is even broader than that
6 discussed in *Rudd* ("by or for any person or organization that may be held legally liable for the
7 injury"), which the *Rangel* court noted in its reference to *Rudd*. Further, the Court of Appeal's
8 statement in *Rudd*, whether dictum or not, clearly acknowledges in the context of the statute that the
9 obligation to pay workers compensation "would appear to qualify as a payment by 'any person . . .
10 legally liable' in reduction of the insurer's liability under underinsured coverage." *Rudd*, 219 Cal.
11 App. 3d at 954 n.7. The language of the second sentence of D.3, while not identical to the language
12 in § 11580.2(p)(4), is clearly derived from that language and intended to invoke the statute's double
13 recovery protections, as discussed in *Rudd*. Fast Undercar Inc. or its workers compensation carrier
14 became legally responsible for elements of plaintiff's loss as a result of his accident in the course and
15 scope of employment. Thus, the policy provides for the offset of workers' compensation as
16 permitted by § 11580.2(h) because plaintiff's workers' compensation recovery falls under the
17 provision of D.2 as a sum paid "by or for anyone who is legally responsible."

18 Finally, plaintiff argues that the third sentence of D.3, "We will not pay for any element of
19 'loss' if a person is entitled to receive payment for the same element of 'loss' under any workers'
20 compensation, disability benefits or similar law," could not permit Atlantic Mutual to reduce the
21 amount owed for non-economic damages by the workers' compensation award if the policy limits
22 were not exhausted because workers' compensation did not compensate for non-economic losses.
23 Atlantic Mutual does not appear to seriously contest this argument, but it has no application to the
24 present circumstances.

25 **C. Personal Injury Action Offset**

26 Plaintiff contends that Atlantic Mutual was not entitled to reduce the benefits under the
27 policy by the full amount of the Personal Injury Action settlement with the other tortfeasors. He
28 asserts that \$31,102.30 of that \$65,000 was paid as reimbursement to workers' compensation.

1 Atlantic Mutual objects to plaintiff's evidence of this payment. Specifically, Atlantic Mutual
2 contends that the interrogatory response and document dated June 26, 2000 setting forth the workers'
3 compensation insurance lien against the Personal Injury Action settlement upon which plaintiff
4 relies to prove that reimbursement was made to workers' compensation is merely hearsay. *See*
5 Objections to Plf.'s Evidence in Supp. of Mot. Summ. J. at 1. Atlantic Mutual does not otherwise
6 appear to contest plaintiff's position on the matter. The court shares Atlantic Mutual's concern that
7 the evidence is insufficient as submitted and asks that plaintiff provide a verified statement or other
8 proof that such payment was made to reimburse workers' compensation. If plaintiff can submit
9 proper evidence that the \$31,102.30 was paid out of the Personal Injury Action settlement as a
10 reimbursement of the workers' compensation lien, the court will be satisfied that Atlantic Mutual is
11 entitled to a setoff in the amount of \$33,897.40, rather than in the amount of the full settlement
12 amount of \$65,000.

III. ORDER

For the foregoing reasons, the court denies plaintiff's motion for summary judgment as follows:

1. Atlantic Mutual is entitled to offset from its policy limits the amount of workers' compensation benefits received by plaintiff as workers' compensation benefits were paid for bodily injury for which the workers' compensation carrier or employer were "legally responsible."
2. Atlantic Mutual is not entitled to offset any portion of the Personal Injury Action settlement that was paid for reimbursement of the workers' compensation lien. However, based on the evidence submitted, cannot grant summary adjudication as to what amount, if any, of the \$65,000 Personal Injury Action Settlement is to be refunded to Ruiz.

DATED: 9/18/07

RONALD M. WHYTE
RONALD M. WHYTE
United States District Judge

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9 registered for e-filing under the court's CM/ECF program.

10
11 **Dated:** 9/18/07

12 /s/ MAG
13 **Chambers of Judge Whyte**